

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company )  
d/b/a Ameren Missouri's Voluntary Green )  
Program/Pure Power Program Tariff )  
Filing. )

**Case No. EO-2013-0307**  
Tariff No. JE-2013-0197

**STAFF'S REPLY BRIEF**

**COMES NOW**, the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), and in reply to Ameren Missouri's Proposed Findings of Fact and Conclusions of Law, states as follows:

In the years since the Voluntary Green Tariff was first promulgated, the State of Missouri has developed additional avenues to support renewable energy generation. Ameren Missouri customers have many options to purchase and retire RECs to support renewable energy generation.<sup>1</sup>

Ameren Missouri argues that their customers should have the option to blindly pay dollars for one purpose, but have them subverted for another. Staff disagrees. Beyond this basic disagreement, the heart of Ameren Missouri's argument is that the justification for the rate doesn't matter because the program is voluntary. This theory – even if it were lawful, which it is not – fails to recognize that Ameren Missouri has made it unquestionably clear that its customers do not know what they're getting. Customers have no idea what portion of their paid rates actually go to support renewable energy generation.

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<sup>1</sup> Transcript Volume 1, pages 33-34

Ameren Missouri does not attempt to provide cost-justification for its requested rate. The rate is not, in fact, cost-justified, as Staff has demonstrated. The basic premise of Ameren Missouri's *Proposed Findings of Fact and Conclusions of Law* appears to be that if Ameren Missouri says so, it must be so. Ameren Missouri fails to address the burden to of proof, which it also failed to meet. Much of Ameren Missouri's filing consists of self-serving and conclusory "facts," and non-sequatur conclusions of law that have no basis in fact or evidence. Staff will not address each of them separately, but will discuss several of the more egregious items below.

In paragraphs 12, 14, 15, 23, and 24, Ameren Missouri makes assertions regarding the rate it charges for RECs compared to the price of RECs under various other programs. However, very few of the REC programs are offered by rate-regulated utilities<sup>2</sup> and none of the other REC programs offered in Missouri are rate regulated.<sup>3</sup> Even if a simple comparison of the rate of the Ameren Missouri tariff sheets to the tariff sheets of other rate-regulated investor owned utilities in other states were appropriate, there is no evidence that these other programs are similar to Pure Power; these rates may be for more than the purchase of a REC on the wholesale market. These other programs may facilitate renewable generation build-out by the offering utility. More importantly, there was no evidence presented of what percentage of the rate under these other programs ultimately makes it to a renewable energy producer.<sup>4</sup> Most importantly, it does not follow that the lowest rate paid is the **best** rate for a program, if that rate also results in fewer dollars being expended for the purpose of the program.

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<sup>2</sup> Ameren Missouri Exhibit 3, Martin Surrebuttal, pages 6 – 7.

<sup>3</sup> Transcript Volume 1, page 152.

<sup>4</sup> Transcript Volume 1, page 152.

Regardless of the comparison of Ameren Missouri's requested rates to other rates, no matter how dissimilar, these comparisons have no bearing on the reasonableness and justness of Ameren Missouri's requested rate.<sup>5</sup> To follow Ameren Missouri's logic on this point, the Commission could simply order compliance tariffs in an Ameren Missouri rate case that are in conformance with the rates utilized by the City of Columbia. This would, of course, be completely inappropriate and it is no less inappropriate for the Commission to accept Ameren Missouri's suggestion in this instance to ignore the lack of cost-justification for its requested Pure Power rates.

When Ameren Missouri argues that the cost of a retired REC under the contract Ameren Missouri made with 3Degrees is adequate cost basis for the rate, it fails to recognize that the purpose of the tariff sheets has not been amended to be "to allow Ameren Missouri customers the opportunity to give cash to 3Degrees." The rate, whether or not it includes "education," is intended to support renewable energy. The price agreed under the contract is irrelevant to that purpose, unlike the price achieved by a renewable energy generator.

In paragraph 19, Ameren Missouri asserts that "Ameren Missouri provides Staff with a copy of all Pure Power marketing materials each year." However, there is no evidence that this is true. Certainly, Ameren Missouri entered into an agreement with Staff to provide Staff with these materials and the Commission approved that agreement. However, there is nothing in the record to indicate that Staff received **all** of these materials **each** year.

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<sup>5</sup> As discussed throughout Staff Exhibit #1, Ensrud Rebuttal Testimony, in the states that Staff examined where a REC program is offered by a regulated utility, those programs are subject to financial audit.

In paragraph 20, Ameren Missouri asserts that “Staff and Ameren Missouri agreed to specific language which is required to appear on all marketing material as well as on the Company's Pure Power website....” However, this language was not added until after thousands of customers had already signed up for the program and was only added **after** the Commission recognized concerns about customer confusion in its Report and Order in Case No ER-2008-0318.

Ameren Missouri blatantly misrepresents the facts in paragraph 23. Ameren Missouri makes a false allegation that Staff’s investigation into the Pure Power rate would require inquiries into “the salaries of 3Degrees’ personnel, the cost of furniture purchased, as well as how much.” This is simply untrue. Mr. Ensrud testified that he did not raise these items; instead, these were items brought up by Ms. Tatro at his deposition.<sup>6</sup> There is no evidence that Staff has sought this information in this or any other case, or plans to do so in the future. **Staff has consistently asserted that its interest in other expenditures made by 3Degrees is only incidental to Staff’s need to know the percentage of Pure Power revenues that are ultimately received by those producing renewable energy.**<sup>7</sup> This misstatement of the facts does a disservice to the Commission’s fact-finding obligations that are a necessary prerequisite to its rate-setting authority and responsibility.

Staff does agree with Ameren Missouri’s assertion in paragraph 23 that there is no need to delve into all of the costs and profits of a non-regulated, third-party entity. There is no reason at all for the Commission to examine 3Degrees costs and Staff has no need to request any such information so long as Ameren Missouri would provide

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<sup>6</sup> Transcript Volume 1, pages 151 – 152.

<sup>7</sup> Transcript Volume 1, pages 106 – 107.

Staff with information concerning the percentage of Pure Power revenues that go to support renewable energy development. The problem Ameren Missouri claims to face is entirely one of its own making.

In paragraph 25, Ameren Missouri asserts that “[t]he public comments filed in this case indicate that customers, both residential and commercial, support the program, understand the program and want to see it continued.” However, the public comments were not admitted into the record. Regardless, Staff is not surprised if certain uninformed customers are supportive of a program they participate in by paying an extra rate.<sup>8</sup> That is unremarkable. That also does nothing to support Ameren Missouri’s contention that those customers understand the program nor does it address Staff’s concern that these customers do not understand what they are getting. Much as Chairman Kenney noted, *most* contributors to a charity care about where the money goes, why would rate payers care any less?<sup>9</sup>

Ameren Missouri has made it unquestionably clear that its customers do not know what they are getting. Ameren Missouri refuses to provide the Commission, the Staff, or its own customers with accurate information about what money the program brings to renewable energy generators to support renewable energy development. Beyond this obfuscation, Ameren Missouri’s final argument, that the option to participate in Pure Power should not be taken away from its customers, offers a false choice. Ameren Missouri customers have many options to participate in the purchase and retirement of RECs, a process that provides support for renewable energy development. The option in question is the option for customers to pay dollars to 3Degrees without

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<sup>8</sup> As discussed throughout Staff Exhibit #1, Ensrud Rebuttal Testimony both customers and the Florida Commission reversed support in reaction to actual expenditures made under the Florida Sunshine program.

<sup>9</sup> Mr. Barbieri did testify that he does not examine such information, see Transcript Volume 1, page 64.

knowledge of what percent are used to support renewable energy development, under the guise of a Commission-approved **just and reasonable** rate. Since the rate is not just and reasonable, that option must be taken away.

**WHEREFORE**, the Staff submits this reply brief and recommends the Commission reject Ameren Missouri's Tariff Filing JE-2013-0197.

Respectfully submitted,

**/s/ Sarah Kliethermes**

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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to counsel of record this 15<sup>th</sup> day of April, 2013.

**/s/ Sarah Kliethermes**